

RWANDA / JUDGMENT

IKIGO CY'IMISORO N'AMAHORO v. KAMBA GENERAL MARCHANDISE Ltd

RLR V.3-2016

COURT

Supreme Court

DECIDED

22 January 2016

CASE / FILE NUMBER

RCOMA 0152/12/CS

Source: amategeko.gov.rw · Research copy typeset by Esheria. Not court-issued or certified.

IKIGO CY'IMISORO N'AMAHORO v. KAMBA GENERAL MARCHANDISE Ltd

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2016-01-22
- Case/document no.: RCOMA 0152/12/CS
- Collection: Supreme Court

Text

Page 1

RRA v. KAMBA GENERAL MARCHANDISE Ltd [Rwanda URUKIKO RW'IKIRENGA – RCOMA 0152/12/CS (Hatangimbabazi, P.J., Mukamulisa na Hitiyaremye, J.) 15 Mutarama 2016] Amategeko agenga imisoro – Umusoro k'umusaruro – Icibwa ry'umusoro ku mafaranga y'ingwate atangwa n'abaguzi – Ufite inshangano zo kugaragaza ibimenyetso – Ingwate ni igikorwa cyo gushingana kidacibwa umusoro kuko igisoreshwa ari umusaruro – Ikigo cy'Imisoro n'Amahôro gifite inshingano yo kugaragaza ibimenyetso iyo bukosora imenyeshya ry'umusoro w'umusoreshwa – Itegeko N°16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro, ingingo ya 16(1), (2) – Itegeko No 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha nk'uko ryahinduwe kandi ryujwe kugeza ubu, ingingo ya 44. Incamake y'ikibazo: Uru rubanza rukomoka ku mafaranga 37.447.020 y' igengenzura ry'umusoro ku nyungu, umusoro ku nyongeragaciro n'umusoro ku bihembo ku myaka ya 2006,2007 na 2008 waciwe KAMBA General Marchandise Ltd yakorewe n'Ikigo cy'imisoro n'amahoro (RRA). KAMBA General Marchandise Ltd ntiyishimiye umwanzuro w'ubugenzuzi bituma ajuririra Komiseri mukuru maze nawe

ayisubiza ko 2.790.000Frw yasubijwe muri Kigali Multi Choice Ltd avanywe mu musoro yishyuzwa ikaba igomba kwishyura asigaye. KAMBA General Merchandise Ltd yajuririye uwo mwanzuro mu Rukiko Rukuru rw'Ubucuruzi isaba ko umusoro 22.957.627Frw avanwa mu mafaranga amusoreshwa kubera ko adakomoka ku ubucuruzi ahubwo ari igwate yatagwaga n'abaguzi. Urwo Rukiko rwemeje ko umusoro ungana na 22.957.627 Frw uvanwa mu wemejwe na Komiseri Mukuru, rutegeka kandi RRA kwishyura indishyi z'ikurikiranarubanza n'igihembo cya Avoka no gutanga amagarama y'urubanza. RRA ntiyishimiye icyo cyemezo akijuririra mu Rukiko rw'Ikirenga avuga ko igenzura ku musoro ryakorewe KAMBA General Merchandise Ltd riri mu bwoko by'isoresha rikorwa hakoreshejwe inyandiko y'ikosora aho mu kubara umusoro hagenderwa ku mahame remezo y'ibaruramari kuko mbere y'uko amafaranga ajyanwa muri Banki agomba kubanza gushyirwa mu bitabo byerekana ko yanyuze muri «caisse», ariko ko kubirebana n'uru rubanza, amafaranga yajyanywe muri Banki atanyujijwe muri «caisse» ari nayo mpamvu agomba gusoreshwa ikindi kandi iyo ayo amafaranga aza kuba ingwate hari kugaragara «bordereaux» za banki zibyemeza, ikindi cyerekana ko atari ingwate nuko bamwe mubo avuga ko batanze ayo mafaranga yingwate atiyabasubizaga yose, kandi nayo ivuga ko ayobashibije adahura n'ayo bakiriye. KAMBA General Merchandise Ltd yiregura ivuga ko kubika amafaranga y'ingwate kuri banki no gusubiza uje kuyaka hakoreshejwe ari muri caisse nta kosa ririmo, ko icyangombwa aruko aba ahari kuko iyo atahaba byari gutera icyuho mu ibaruramari ko kandi asobanura ko uwatanze ingwate ashobora kuyisubizwa igihe ashakiye, ndetse ko ibyo RRA iburanisha ko iyo ngwate ariyo yaherwagaho abaguzi bishyura nta shingiro bifite kubera ko nta tegeko rivuga ko ingwate iherwaho mu kwishyura ahubwo isubizwa nyirayo iyo mpamvu yatumye itangwa itakiraho; umusoresha akaba kugeza ubu adahakana ibyakozwe n'ibaruramari. KAMBA General Merchandise Ltd isoza isaba indishyi z'ikurikiranarubanza n'igihembo cy'Avoka kuko ikomeje gushorwa mu manza nta mpamvu naho RRA ikavuga ko izo ndishyi zasuzumwa mu bushishozi bw'Urukiko kuko zisabwa zishingiye ku kirego cy'iremezo cyatanzwe.

Page 2

Incamake y'icyemezo: 1. Kuba igisoreshwa ari umusaruro bituma ingwate ikaba atari umusaruro kuko ari igikorwa cyo gushingana kidacibwa umusoro bityo rero KAMBA General Merchandise Ltd amafaranga y'ingwate yasubije beneyo itayatangira umusoro.

2. Ikigo cy'Imisoro n'Amahôro gifite inshingano yo kugaragaza inyungu isoresheha KAMBA General Merchandise Ltd yaba yaravanye mu ngwate yakaga abaguzi bayo, bityo mu gihe icyo kigo kitagaragaza ko KAMBA General Merchandise Ltd yacuruzaga ingwate yakaga abaguzi bayo cyangwa se icyatumye ishyira ingwate kuri konti imwe n'iyibicuruzwa ari uko yayivanagamo inyungu runaka, bikwiye gufatwa ko Ikigo cy'Imisoro n'Amahôro kitagaragaza ibimenyetso by'ibyo kivuga.
3. Igikorwa cyose cy'umuntu cyangirije undi, gitegeka nyiri gukora ikosa rigikomokaho kuriha ibyangiritse bityo rero KAMBA General Merchandise Ltd ikaba igenewe amafaranga y'ikurikiranarubanza n'igihembo cya Avoka kuko hari byo yatakaje mu gukurikirana uru rubanza ndetse binaba ngobwa ko yiyambaza Avoka uhebwa. Ubujurire nta shingiro bufite .

Amagarama y'urubanza aherereye ku wajuriye. Amategeko yakoreshejwe: Itegeko N°16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro, ingingo ya 16(1), (2). Itegeko No 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha nk'uko ryahinduwe kandi ryujijwe kugeza ubu, ingingo ya 44. Itegeko ryo kuwa 30/07/1888 rigenga amasezerano cyangwa imirimo nshinganwa, ingingo ya 258. Nta manza zifashishijwe. Urubanza I. IMITERERE Y'URUBANZA [1] KAMBA General Marchandise Ltd yakorewe igenzura ry'umusoro ku nyungu, umusoro ku nyongeragaciro n'umusoro ku bihembo ku myaka ya 2006, 2007 na 2008 maze icibwa umusoro wose hamwe ungana na 37.447.020Frw. KAMBA General Marchandise Ltd ntiyishimiye umwanzuro w'abagenzuzi, ijuririra Komiseri Mukuru, nawe asubiza ku wa 10/01/2012, ayimenyesha ko 2.790.000Frw yasubijwe Kigali Multi Choice Ltd avanywe mu musoro wishyuzwa, ikishyura 34.825.340Frw. [2] KAMBA General Marchandise Ltd ntiyishimiye uwo mwanzuro iregera Urukiko Rukuru rw'Ubucuruzi isaba ko umusoro ungana na 22.957.627Frw uvanwa mu wemejwe na Komiseri Mukuru kubera ko ari amafaranga adakomoka ku bucuruzi ahubwo ari ingwate (caution) abaguzi bashyira kuri konti yayo mu gihe bagitegereje ibicuruzwa.

Page 3

- [3] Mu rubanza no RCOM 0026/12/HCC rwaciwe ku wa 06/09/2012, urwo Rukiko rwasanze amafaranga ari kuri konti ya KAMBA General Marchandise Ltd atarakomotse ku bikorwa by'ubucuruzi ahubwo ari ingwate yashyizweho n'abaguzi, umusoro ucibwa ku gikorwa kijyanye no kugurisha mu gihe ingwate ijyana n'igikorwa cyo gushingana kandi nta mpamvu yo gusesengura ibijyanye n'ingano y'urwunguko kubera ko mu Rwanda amategeko y'ubucuruzi yemerera ugura n'ugurisha kumvikana ku nyungu ndetse n'ababuranyi bakaba batagaragaje ingano y'urwunguko yumvikanyweho, rwemeza ko umusoro ungana na 22.957.627Frw uvanwa mu wemejwe na Komiseri Mukuru, rutegeka kandi Ikigo cy'Imisoro n'Amahôro kwishyura indishyi z'ikurikiranarubanza n'igihembo cya Avoka zingana na 500.000Frw no gutanga amagarama y'urubanza. [4] Ikigo cy'Imisoro n'Amahôro ntiyishimiye icyo cyemezo kijuririra mu Rukiko rw'Ikirenga, iburanisha mu ruhamye riba kuwa 22/12/2015 KAMBA General Marchandise Ltd iburanirwa na Me Twilingiyemungu Joseph naho Ikigo cy'Imisoro n'Amahôro gihagarariwe na Me GASANA Raoul. II. IBIBAZO BIGIZE URUBANZA N'ISESENGURWA RYABYO
1. Kumenya niba amafaranga y'ingwate yasubijwe beneyo yasoreshwa nk'akomoka ku bikorwa by'ubucuruzi. [5] Me Gasana Raoul uburanira Ikigo cy'Imisoro n'Amahôro avuga ko igenzura ku musoro ryakorewe KAMBA General Marchandise Ltd riri mu bwoko by'isoresha rikorwa hakoreshejwe inyandiko y'ikosora (principe du contradictoire) aho mu kubara umusoro hagenderwa ku mahame remezo y'ibaruramari kuko mbere y'uko amafaranga ajyanwa muri Banki agomba kubanza gushyirwa mu bitabo byerekana ko yanyuze muri «caisse», ariko ko kubirebana n'uru rubanza, amafaranga yajyanywe muri Banki atanyujijwe muri «caisse» ari nayo mpamvu agomba gusoreshwa. [6] Asobanura ko igenzura ry'ibitabo by'ibaruramari bigaragaza ko hari amafaranga KAMBA General Marchandise Ltd yita ingwate (caution) y'abaguzi yashyize kuri konti yayo, abo baguzi bayasubizwa bamaze guhabwa ibicuruzwa,

nyamara umusoresha akaba agaragaza ko ayo mafaranga atari ingwate (Caution) kubera ko Kamugisha, nyiri KAMBA General Merchandise Ltd, na Sibomana Augustin, Umujyanama wayo mu by'imisoro (Tax Advisor) babwiye abagenzuzi b'imisoro ko, kubera ko amafaranga y'ingwate atari ayabo, bayakiraga mu ntoki (cash), nyuma bakayajyana kuri Banki atanyuze muri «caisse», aribyo bituma ayo mafaranga atagaragara mu bitabo byabo by'ibaruramari. [7] Asoza avuga ko amafaranga yashyizwe kuri banki iyo aza kuba ingwate (caution) hari kugaragara «bordereaux» za banki zibyemeza, ikindi cyerekana ko atari ingwate (caution) akaba ari nkaho uwitwa Nzaramba yabanje gutanga 5.580.000 Frw ku wa 10/09/2007, arongerera atanga 3.260.000Frw ku wa 12/10/2007, ariko wareba amafaranga yasubijwe ugasanga ari 3.260.000Frw, bivuze ko amafaranga KAMBA General Merchandise Ltd yita ingwate itayasubije yose, kandi nayo bavuga ko bashubije adahura n'ayo bakiriye. [8] Me Twilingiyemungu Joseph uburanira KAMBA General Merchandise Ltd avuga ko hakorwa igenzura ry'umusoro ku nyungu, umusoro ku nyongeragaciro n'umusoro ku bihembo

Page 4

ku myaka ya 2006, 2007 na 2008 hagendewe ku ibaruramari ryakozwe na KAMBA General Merchandise Ltd, hemezwa ko hishyurwa umusoro ndakuka ungana na 37.447.020Frw, ariko mu guca uwo musoro hirengagizwa amategeko. Asobanura ko Komiseri Mukuru yagejejweho icyo kibazo akemeza ko umusoro ungana na 2.621.716Frw uvanwa mu waciwe ariko ikibazo nyamukuru cy'uko umusoro waciwe hirengagijwe amategeko ntagikemure, ari nacyo cyatumye Kamba General Merchandise Ltd iregera Urukiko Rukuru rw'Ubucuruzi kugira ngo hasuzumwe niba amafaranga y'ingwate yasubijwe beneyo akwiye gusoreshe nk'akomoka ku bikorwa by'ubucuruzi. [9] Avuga kandi ko kubika amafaranga y'ingwate (caution) kuri banki no gusubiza uje kuyaka hakoreshejwe ari muri caisse nta kosa ririmo, ko icyangombwa aruko aba ahari kuko iyo atahaba byari gutera icyuho mu ibaruramari aribyo byitwa "caisse négative", asobanura ko uwatanze ingwate ashobora kuyisubizwa igihe ashakiye, kandi ko ibyo Ikigo cy'Imisoro n'Amahôro kiburanisha ko iyo ngwate ariyo yaherwagaho abaguzi bishyura nta shingiro bifite kubera ko nta tegeko rivuga ko ingwate iherwaho mu kwishyura ahubwo isubizwa nyirayo iyo impamvu yatumye itangwa itakiriho. [10] Asoza avuga ko ibitabo by'ibaruramari ndetse na «historique bancaire» bigaragaza ko hari 26.825.000Frw yashyizwe kuri konti n'abaguzi nk'ingwate yo guhabwa ibicuruzwa kandi ko ibaruramari ryerekana ko ayo mafaranga yasubijwe bene yo, umusoresha akaba kugeza ubu adahakana ibyakozwe n'ibaruramari ari naho mu rubanza rujuririrwa umucamanza yagaragaje ko niba Ikigo cy'Imisoro n'Amahôro kitavuguruzwa ibyanditse mu bitabo by'ibaruramari bya KAMBA General Merchandise Ltd kigomba gutsindwa hashingiwe ku ngingo ya 44 y'Itegeko N° 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha. UKO URUKIKO RUBIBONA [11] Ingingo ya 16, igika cya mbere, y'Itegeko N°16/2005 ryo ku wa 18/08/2005 rigena imisoro itaziguye ku musaruro iteganya ko "Inyungu ku bikorwa by'ubucuruzi ingana n'umusaruro wakiriwe ku bikorwa byose hakuwemo ibyasohowe byose ku birebana n'ibyo bikorwa. Inyungu ku bikorwa irimo kandi umusaruro uva mu igurisha ry'umutungo uwo ari wo wose no ku mafaranga ava mu irangizamutungo yakiriwe mu gihe cy'umusoro." Naho igika cya kabiri cy'iyi ngingo kivuga ko «Inyungu ku bikorwa by'ubucuruzi

ibarwa kuri buri gihe cy'umusoro hashingiwe ku ibarwa ry'inyungu cyangwa igihombo rikorwa hakurikijwe amahame remezo y'ibaruramari ry'igihugu... » [12] Ingingo ya 44 y'Itegeko No 25/2005 ryo ku wa 04/12/2005 rigena imitunganyirize y'isoresha nk'uko ryahinduwe kandi ryujijwe kugeza ubu, iteganya ko Ubuyobozi bw'Imisoro aribwo bufite inshingano zo kugaragaza ibimenyetso iyo bukosora imenyeshya ry'umusoro w'umusoreshwa. [13] Dosiye y'urubanza igaragaza ko igenzura ry'umusoro wishyuzwa KAMBA General Merchandise Ltd ryashingiye ku nyandiko y'ikosora (principe du contradictoire) ritandukanye n'isoresha nta nteguza (procédure d'imposition d'office) kuko ibitabo by'ibaruramari byerekana ko hari amafaranga angana na 26.825.000Frw yatanze mu ntoki (cash) n'abaguzi ba Kamba General Merchandise Ltd nk'ingwate kugira ngo bazahabwe ibicuruzwa, ayo mafaranga akaba yarashyizwe kuri banki asubizwa ba nyirayo ku mataliki atandukanye anyujijwe muri caisse

Page 5

(Cote 5), kandi ko hanabaye iperereza ryakozwe n'Ikigo cy'Imisoro n'Amahôro kugira ngo hamenyekane umusoro ugomba kwishyurwa hagendewe ku byagaragajwe n'ibaruramari KAMBA General Merchandise Ltd yakoze (Cote 20-21). [14] Urukiko rurasanga kuba amafaranga yarakiriwe mu ntoki akajyanwa kuri banki n'abakozi ba KAMBA General Merchandise Ltd atabanje kunyuzwa muri caisse ataribwo bigaragaza ko akomoka ku bikorwa by'ubucuruzi, kandi mu gihe ibitabo by'ibaruramari bya KAMBA General Merchandise Ltd bigaragaza ko ayo mafaranga yari ay'ingwate yo gushingana ibicuruzwa yaje gusubizwa bene yo, Ikigo cy'Imisoro n'Amahôro kikaba ntacyo kinenga ibitabo by'ibaruramari bya Kamba General Merchandise Ltd, ahubwo cyemera ko igisoreshwa ari umusaruro kandi ingwate ikaba atari umusaruro kuko ari igikorwa cyo gushingana kidacibwa umusoro, bituma ntaho uru Rukiko rwahera rwemeza ko amafaranga y'ingwate yasubijwe bene yo atangirwa umusoro. [15] Urukiko rurasanga kandi, nk'uko biteganywa n'ingingo ya 44 y'Itegeko No 25/2005 ryo ku wa 04/12/2005 ryibukijwe hejuru, Ikigo cy'Imisoro n'Amahôro aricyo gifite inshingano yo kugaragaza inyungu isoreshe KAMBA General Merchandise Ltd yaba yaravanye mu ngwate yakaga abaguzi bayo, bityo mu gihe icyo kigo kitagaragaza ko KAMBA General Merchandise Ltd yacuruzaga ingwate yakaga abaguzi bayo cyangwa se ko icyatumye ishyira ingwate kuri konti imwe n'iyibicuruzwa ari uko yayivanagamo inyungu runaka, bikwiye gufatwa ko Ikigo cy'Imisoro n'Amahôro kitagaragaza ibimenyetso by'ibyo kivuga, bityo ubujurire bukaba nta shingiro bufite.

2. Kumenya niba KAMBA General Merchandise Ltd yahabwa indishyi isaba muri uru rubanza. [16] Me Twilingiyemungu Joseph avuga ko KAMBA General Merchandise Ltd ikomeje gushorwa mu manza nta mpamvu, ikaba ibisabira indishyi zingana na 1.000.000 Frw y'ikurikiranarubanza n'igihembo cya Avoka. [17] Me Gasana Raoul avuga ko ibijyanye n'indishyi z'ikurikiranarubanza n'igihembo cya Avoka zisabwa na KAMBA General Merchandise Ltd byasuzumwa mu bushishozi bw'Urukiko kuko zisabwa zishingiye ku kirego cy'iremezo cyatanze. UKO URUKIKO RUBIBONA [18] Urukiko rurasanga kuba KAMBA General Merchandise Ltd yararezwe mu Nkiko byaratumye igira ibyo itakaza mu gukurikirana uru rubanza ndetse biba ngombwa ko yiyambaza na Avoka uhembwa, bityo hashingiwe ku ngingo ya 258 y'Igitabo cya Gatatu cy'Urwunge rw'Amategeko

Mbonezamubano, iteganya ko "igikorwa cyose cy'umuntu cyangirije undi, gitegeka nyiri gukora ikosa rigikomokaho kuriha ibyangiritse", KAMBA General Merchandise Ltd ikaba igenewe, kuri uru rwego, amafaranga ibihumbi magana atanu (500.000 Frw) y'ikurikiranarubanza n'igihembo cya Avoka. III. ICYEMEZO CY'URUKIKO [19] Rwemeje ko ubujurire bw'Ikigo cy'Imisoro n'Amahôro nta shingiro bufite;

Page 6

[20] Ruvuze ko nta gihindutse ku mikirize y'urubanza RCOM 0026/12/HCC rwaciwe n'Urukiko Rukuru rw'Ubucuruzi ku wa 06/09/2012; [21] Rutegetse Ikigo cy'imisoro n'Amahôro kwishyura KAMBA General Merchandise Ltd amafaranga ibihumbi magana atanu (500.000Frw) y'ikurikiranarubanza n'igihembo cya Avoka kuri uru rwego yiyongera kuyo yari yaciwe ku rwego rwa mbere; [22] Rutegetse Ikigo cy'imisoro n'Amahôro kwishyura amagarama y'urubanza ahwanye n'amafaranga ibihumbi ijana (100.000Frw).

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.amategeko.gov.rw/view/doc/7438/7732>

CASE PAGE <https://chat.esheria.ai/case-law/rwanda/ikigo-cyimisoro-namahoro-rra-v-kamba-general-marchandise-ltd-incometax-supreme-court-2016>

Prepared on 13 October 2026 · Esheria